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असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in the Lok Sabha on 13th December, 2005:—

BILL No. 158 of 2005

A Bill to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations but whose rights could not be recorded and to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes including those who were forced to relocate their dwelling due to State development interventions.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Scheduled Tribes (Recognition of Forest Rights) Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) “competent authority” means any officer or authority appointed by the Central Government, by notification, to deal with disputes referred to in sub-section (7) of section 4;

(b) “core areas” means such areas of National Parks and Sanctuaries required to be kept as inviolate for the purposes of wildlife conservation as may be determined, by notification, by the Ministry of the Central Government dealing with Environment and Forests;

(c) “forest dwelling Scheduled Tribes” means the members or community of the Scheduled Tribes who primarily reside in forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for *bona fide* livelihood needs;

(d) “forest land” means land of any description falling within any forest area and includes unclassified forests, un-demarcated forests existing or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;

(e) “forest rights” means the forest rights referred to in section 3;

(f) “forest villages” means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of *taungya* settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;

(g) “Gram Sabha” means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, the traditional village institutions;

(h) “habitat” includes the area comprising the customary habitat and such other habitat in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;

(i) “minor forest produce” includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

(j) “nodal agency” means the nodal agency specified in section 12;

(k) “notification” means a notification published in the Official Gazette;

(l) “prescribed” means prescribed by rules made under this Act;

(m) “Scheduled Areas” means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;

(n) “sustainable use” shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;

(o) "village" means—

(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; or

(ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or

(iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

(p) "wild animal" means any species of animal specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature.

CHAPTER II

FOREST RIGHTS

3. For the purposes of this Act, the following rights, which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes, namely:—

Forest rights of forest dwelling Scheduled Tribes defined.

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;

(b) community rights such as *nistar*, by whatever name called, and used in erstwhile princely States, *Zamindari* or such intermediary regimes;

(c) right of ownership access to use or dispose of minor forest produce;

(d) other community rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest land to titles;

(h) rights of conversion of forest villages into revenue villages;

(i) rights of settlement of old habitations and unsurveyed villages, whether notified or not;

(j) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(k) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal.

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

Recognition of
and vesting of
forest rights in
forest dwelling
Scheduled
Tribes.

4. (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to collect, utilise or transfer minor forest produce in such manner as may be prescribed:

Provided that the forest rights determined under this Act for vesting in the core areas of the National Parks and Sanctuaries shall be granted on provisional basis for a period of five years from the date of coming into force of this Act:

Provided further that such provisional rights in such core areas shall become permanent if the holders of such rights are not re-located within said period with due compensation.

(2) The recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities had occupied forest land before the 25th day of October, 1980.

(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable.

(4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.

(5) Where the forest rights recognised and vested by sub-section (1) are in respect of land mentioned in clause (a) of section 3,—

(i) such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;

(ii) the title to the extent given shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in case of single member household.

(6) The forest rights recognised and vested by sub-section (1) in the forest dwelling Scheduled Tribe shall—

(i) be exercised only to the extent vested;

(ii) include the responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining forests in which community rights have been vested.

(7) In case any forest right recognised and vested by sub-section (1) is disputed by any State Government or local authority, the competent authority shall consider the records prepared at the time of declaring the area as Scheduled Areas, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution along with evidence and then pass an appropriate order in the matter:

Provided that no order refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are given an opportunity of being heard.

(8) The forest rights shall be conferred free of all encumbrances, including requirements of net present value and compensatory afforestation for diversion of forest land.

5. The holder of any forest right under this Act shall—

(a) save for those activities that are permitted under such rights, not indulge in any activity that adversely affects the wild animal, forest and the biodiversity in the local area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including re-afforestation;

Duties of holders of forest rights.

(b) ensure that adjoining catchments areas, water sources and other ecologically sensitive areas are adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) inform the Gram Sabha and to the forest authorities any activity in violation of any of the provisions of —

(i) the Wild Life, (Protection) Act, 1972; or

(ii) the Forest (Conservation) Act, 1980; or

(iii) the Biological Diversity Act, 2002;

(e) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild animals, forest and biodiversity are complied with.

53 of 1972.

69 of 1980.

18 of 2003.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. (1) The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.

Authorities to vest forest rights in forest dwelling Scheduled Tribes and the procedure thereof.

(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:

Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.

(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:

Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:

Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.

(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.

(6) The decision of the District Level Committee on the record of forest right shall be final and binding.

(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.

(8) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government at the appropriate level as may be prescribed.

(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.

CHAPTER V

OFFENCES AND PENALTIES

Penalties.

7. If any holder of any forest right conferred by or under this Act or any other person—

(i) contravenes or abets the contravention of any of the provisions of this Act; or

(ii) commits a breach of any of the conditions of the forest right vested or recognised under this Act; or

(iii) engages in unsustainable use of forest or forest produce; or

(iv) kills any wild animal or destroys forests or any other aspect of biodiversity; or

(v) fells trees for any commercial purpose,

he shall be guilty of an offence against this Act and be punished with fine which may extend to one thousand rupees and in case the offence is committed more than once, the forest rights of the person who has committed the offence for the second or subsequent time shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha, may decide:

Provided that the penalties under this section shall be in addition to and not in derogation of imposition of any penalty under any other law for the time being in force.

Offences by members or officers of authorities and committees under this Act.

8. Where any authority or Committee or officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:

Provided that nothing contained in this sub-section shall render any member of the authority or committee or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Cognizance of offences.

9. No court shall take cognizance of any offence under section 8 unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.

CHAPTER VI

MISCELLANEOUS

Members of authorities, etc., to be public servants.

10. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

11. (1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

Protection of action taken in good faith.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against any authority referred to in Chapter IV including its chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

12. The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

Nodal agency.

13. In the performance of its duties and exercise of its powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

Power of Central Government to issue directions.

14. Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

15. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which forest rights may be exercised under sub-section (1) of section 4;

(b) the procedure for and the manner of recognition and verification of forest rights under sub-section (4) of section 4;

(c) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommend claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;

(d) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6;

(e) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;

(f) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the rich traditions of the country where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow ignored the *bona fide* interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belong and depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have initiated action to recognise the occupation and other rights of the forest dwellers and have in their policy processes realised that tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. There is a recognition of the fact that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests from becoming abode of undesirable elements.

2. It is, therefore, proposed to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Scheduled Tribes. This Bill is a logical culmination of the process of recognition of forest rights. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations which includes forest land for sustenance and usufructs from forest based resources is the fundamental basis on which the proposed legislation stands.

3. The Bill, *inter alia*, provides for the following matters, namely:—

(i) it reinforces and utilises the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices;

(ii) it lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights, which stand vested in forest dwelling tribal communities, become legally enforceable through corrective measures in the formal recording system of the executive machinery;

(iii) it provides for adequate safeguards to avoid any further encroachment of forests and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;

(iv) it addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

P.R. KYNDIAH.

The 5th December, 2005.

FINANCIAL MEMORANDUM

Sub-clause (a) of clause 2 of the Bill provides for appointment of an officer or authority as competent authority to deal with disputes relating to forest rights. Sub-clause (3) of clause 6 of the Bill *inter alia* provides for the constitution of Sub-Divisional Level Committee by the State Government. Sub-clause (5) of clause 6 provides for the constitution of District Level Committee by the State Government. Sub-clause (7) of clause 6 provides for the constitution of State Level Monitoring Committee by the State Government. The above Authorities and Committees shall consist of Government officers. The expenditure towards holding of meetings, etc., would be negligible and it is not possible to make an estimate of them. There shall be no other additional expenditure, both recurring and non-recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which rules may be made under the said clause. These matters, *inter alia*, relate to the manner in which forest rights may be exercised under sub-section (1) of section 4, the procedure for and the manner of recognition and verification of forest rights under sub-section (4) of section 4, the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommend claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Level Committee under sub-section (2) of section 6, the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6 and the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6. Sub-clause (3) of clause 15 provides that the rules are required to be laid before Parliament.

2. The aforesaid matters relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

P. D. T. ACHARY,
Secretary General.